



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIRST SECTION

CASE OF STROBEL v. AUSTRIA

(Application no. 25929/05)

JUDGMENT

STRASBOURG

4 June 2009

FINAL

04/09/2009

This judgment may be subject to editorial revision.

In the case of Strobel v. Austria,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Christos Rozakis, *President*,
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 14 May 2009,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 25929/05) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a German national, Mr Karl Strobel (“the applicant”), on 22 June 2005.

2. The applicant was represented by Mr F. Zimmermann, a lawyer practising in Klagenfurt. The Austrian Government (“the Government”) were represented by their Agent, Ambassador F. Trauttmansdorff, Head of the International Law Department at the Federal Ministry for European and International Affairs.

3. On 6 November 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

4. The German Government did not make use of their right to intervene (Article 36 § 1 of the Convention).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

5. The applicant is a university professor of ancient history and archeology who was appointed at Klagenfurt University in 1998. Under the terms of appointment he was entitled to reimbursement of the removal costs

and to a household allowance. In April 2001 the sum of 5,699.21 euros (EUR) was paid to the applicant.

6. On 6 July 2001 the applicant claimed reimbursement of the remaining removal costs in the sum of EUR 4,684.40 and payment of the household allowance in the sum of EUR 5,443.70, plus 4.5% interest since August 1999.

7. The Dean of Klagenfurt University dismissed the applicant's claim on 16 January 2002.

8. The applicant appealed on 29 January 2002 to the Ministry of Education, Science and Culture ("the Ministry").

9. The Ministry did not decide within the statutory six-month time-limit laid down in section 73 § 1 of the General Administrative Proceedings Act. In August 2002 the applicant brought court proceedings relating to the claims at issue. A conditional settlement was reached but was revoked by the applicant in January 2003. The applicant's action was dismissed in February 2003.

10. Meanwhile, on 18 November 2002, the applicant complained to the Administrative Court under Article 132 of the Federal Constitution about the administration's failure to determine his claim. On 29 November 2002 the Administrative Court ordered the Ministry of Education to issue a decision within three months.

11. On 3 March 2003 the Ministry dismissed the applicant's appeal.

12. The applicant lodged a complaint with the Administrative Court on 16 April 2003. The Ministry filed observations in reply on 24 June 2003.

13. On 24 February 2006 the Administrative Court quashed the Ministry's decision as being unlawful.

14. By decision of 25 July 2006 the Ministry referred the case back to the Dean of Klagenfurt University for a new decision. Meanwhile on 8 May 2006 the applicant supplemented his claims, apparently requesting reimbursement of costs incurred for travelling between Klagenfurt and his former place of residence.

15. On 16 October 2006 the applicant was summoned to a hearing and two days later the sum of EUR 4,000 was paid to the applicant with a view to reaching a settlement.

16. The hearing took place on 20 November 2006. According to the minutes the hearing served the purpose of establishing the plausibility of the applicant's claims as submitted on 6 July 2001 and supplemented on 8 May 2006 and to determine their amount with the participation of the applicant. It is then noted that, in the light of the explanations given, the costs and interest claimed seemed plausible. At the close of the hearing the parties concluded a friendly settlement with the following terms:

"(a) Klagenfurt University thus declares its willingness to transfer, in addition to the payment already made of EUR 4,000 and the regulated transport costs in the amount

of EUR 5,699.21, the lump-sum of EUR 10,000 within 14 days to the account of Professor Strobel.

(b) Professor Strobel, for his part, withdraws all requests in connection with the proceedings at issue. As a result, the demands and claims asserted in the present proceedings are completely settled and complied with.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

17. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

18. The Government contested that argument.

A. Admissibility

19. The Government asserted that the settlement of 20 November 2006 had deprived the applicant of victim status within the meaning of Article 34 of the Convention or, alternatively, resolved the matter within the meaning of Article 37 § 1 (b) of the Convention. According to the settlement of 20 November 2006, the applicant had been granted a lump sum of EUR 14,000. In exchange he had declared all his claims settled. The Government observed that the present application had already been introduced when the settlement was concluded. While the university organs were not aware of the Convention proceedings at that time, the applicant could have been expected to refer to them if he intended to exclude them from the settlement.

20. The applicant contested this position. He argued that the lump-sum awarded under the settlement only covered part of his claims submitted on 6 July 2001 and 8 May 2006 plus interest and did not provide any compensation for non-pecuniary damage caused by the length of the proceedings, let alone for the costs of the Convention proceedings he had had to initiate. Moreover, his counsel had not been summoned to participate at the hearing. Only the claims raised in the domestic proceedings had been the subject of the negotiations and thus of the settlement. This was reflected by the text of the settlement, which explicitly referred to the “proceedings at issue”.

21. The Court notes that an applicant's status as a victim may depend on compensation being awarded at domestic level on the basis of the facts about which he or she complains before the Court and on whether the domestic authorities have acknowledged, either expressly or in substance, the breach of the Convention. Only when those two conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (*Scordino v. Italy (no. 1)* (dec.), no. 36813/97, ECHR 2003-IV).

22. The Court observes that nothing in the minutes of the hearing of 20 November 2006 or in the text of the settlement (see paragraph 16 above) indicates that the latter was intended to include compensation for the length of the proceedings. The parties established the plausibility of the applicant's claims and, on the basis of that assessment, concluded a settlement providing for the payment of a lump-sum. In any case the domestic authorities did not acknowledge either expressly or in substance the alleged breach of the Convention. The applicant can therefore still claim to be a victim within the meaning of Article 34 of the Convention of the alleged violation.

23. When establishing whether the matter has been resolved within the meaning of Article 37 § 1 (b) the Court examines, firstly, whether the circumstances complained of directly by the applicant still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Pisano v. Italy* [GC] (striking out), no. 36732/97, § 42, 24 October 2002). As noted above, there is no indication that the settlement contained any redress for the duration of the proceedings. Consequently, it cannot be said that the matter has been resolved.

24. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

25. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

26. The period to be taken into consideration began on 16 January 2002, when the Dean of Klagenfurt University dismissed the applicant's claim, as it was at that moment when a "dispute" within the meaning of Article 6 § 1 arose, the administrative authority's decision being a necessary preliminary

step for bringing the dispute before a tribunal (see, for instance, *Morscher v. Austria*, no. 54039/00, § 38, 5 February 2004, with a reference to *König v. Germany*, 28 June 1978, § 98, Series A no. 27) and ended on 20 November 2006 when the parties concluded a settlement. Therefore, the proceedings, which came before three levels of jurisdiction, lasted for four years and ten months.

27. The Court finds that the case was of no complexity and that no delays are attributable to the applicant, while substantial delays are imputable to the authorities, in particular a period of inactivity of two years and eight months occurred before the Administrative Court. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, for instance, *Bösch v. Austria*, no. 17912/05, §§ 20-22, 3 August 2007; *Gierlinger v. Austria*, no. 38032/05, §§ 18-21, 29 February 2008; and *Richte v. Austria*, no. 4490/06, §§ 29-31, 18 December 2008).

28. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

30. The applicant claimed 3,000 euros (EUR) in respect of pecuniary damage, apparently referring to removal costs, and EUR 4,000 for non-pecuniary damage.

31. The Government maintained that all the applicant’s claims had been settled by the agreement of 20 November 2006. Moreover, there was no causal link between the alleged violation and the pecuniary damage claimed. In respect of any non-pecuniary damage the Government asserted that the finding of a violation would be sufficient.

32. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim. The

Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,500 under that head.

B. Costs and expenses

33. The applicant also claimed an overall amount of EUR 7,500 including value-added tax (VAT) for the costs and expenses incurred in the proceedings before the domestic courts and in the Convention proceedings.

34. The Government argued that the costs listed in respect of the domestic proceedings had not been caused by the length of the proceedings. The costs claimed in respect of the Convention proceedings were excessive.

35. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 2,000 for the proceedings before the Court. This sum includes VAT.

C. Default interest

36. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage and EUR 2,000 (two thousand euros) in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President